

House Study Bill 67 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

1 An Act requiring an arrested person to submit a DNA sample
2 if the arrest is for a felony and providing for the
3 reimbursement of costs.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 81.1, Code 2011, is amended by adding the
2 following new subsections:

3 NEW SUBSECTION. 01. "*Arrest*" means the same as in section
4 804.5 and as "taking into custody" in section 232.2.

5 NEW SUBSECTION. 001. "*Dismissal of the charges*" means
6 dismissal of the complaint, indictment, or information in adult
7 court and dismissal of the complaint or petition in juvenile
8 court.

9 Sec. 2. Section 81.1, subsection 8, Code 2011, is amended
10 to read as follows:

11 8. "*Person required to submit a DNA sample*" means a person
12 convicted, adjudicated delinquent, receiving a deferred
13 judgment, or found not guilty by reason of insanity of an
14 offense requiring DNA profiling pursuant to section 81.2.
15 "*Person required to submit a DNA sample*" also means a person
16 arrested for an offense classified as a felony and a person
17 determined to be a sexually violent predator pursuant to
18 section 229A.7.

19 Sec. 3. Section 81.2, Code 2011, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 01. A person arrested for an offense
22 classified as a felony shall be required to submit a DNA sample
23 for DNA profiling pursuant to section 81.4.

24 Sec. 4. Section 81.4, subsection 2, Code 2011, is amended
25 to read as follows:

26 2. A supervising agency having control, custody, or
27 jurisdiction over a person shall collect a DNA sample from a
28 person required to submit a DNA sample. The supervising agency
29 shall collect a DNA sample, upon admittance to the pertinent
30 institution, jail, or facility, of the person required to
31 submit a DNA sample or at a determined date and time set by
32 the supervising agency. If a person required to submit a DNA
33 sample is confined at the time a DNA sample is required, the
34 person shall submit a DNA sample as soon as practicable. If a
35 person required to submit a DNA sample is not confined after

1 the person is required to submit a DNA sample, the supervising
2 agency shall determine the date and time to collect the DNA
3 sample.

4 Sec. 5. Section 81.9, subsections 1 and 2, Code 2011, are
5 amended to read as follows:

6 1. A person whose DNA record has been included in the DNA
7 database or DNA data bank established pursuant to section
8 81.3 may request, in writing to the division of criminal
9 investigation, expungement of the DNA record from the DNA
10 database and DNA data bank based upon dismissal of the charges
11 which caused the submission of the DNA sample, or the person's
12 conviction, adjudication, or civil commitment which caused
13 the submission of the DNA sample being reversed on appeal
14 and the case dismissed. The written request shall contain a
15 certified copy of the final court order dismissing the charges
16 or reversing the conviction, adjudication, or civil commitment,
17 and a certified copy of the dismissal, and any other
18 information necessary to ascertain the validity of the request.

19 2. The division of criminal investigation, upon receipt of
20 a written request that validates the dismissal of the charges,
21 or reversal on appeal of a person's conviction, adjudication,
22 or commitment, and subsequent dismissal of the case, or upon
23 receipt of a written request by a person who voluntarily
24 submitted a DNA sample pursuant to section 81.3, subsection
25 3, paragraph "b", shall expunge all of the DNA records and
26 identifiable information of the person in the DNA database
27 and DNA data bank. However, if the division of criminal
28 investigation determines that the person is otherwise obligated
29 to submit a DNA sample, the DNA records shall not be expunged.
30 If the division of criminal investigation denies an expungement
31 request, the division shall notify the person requesting the
32 expungement of the decision not to expunge the DNA record and
33 the reason supporting its decision. The division of criminal
34 investigation decision is subject to judicial review pursuant
35 to chapter 17A. The department of public safety shall adopt

1 rules governing the expungement procedure and a review process.

2 Sec. 6. Section 229A.7, subsection 6, Code 2011, is amended
3 to read as follows:

4 6. If the court or jury determines that the respondent is a
5 sexually violent predator, the court shall order the respondent
6 to submit a DNA sample for DNA profiling ~~pursuant to section~~
7 ~~81.4~~ if a DNA sample has not been previously submitted pursuant
8 to chapter 81.

9 Sec. 7. Section 232.52, subsection 11, Code 2011, is amended
10 to read as follows:

11 11. The court shall order a juvenile adjudicated a
12 delinquent for an offense that requires DNA profiling under
13 section 81.2 to submit a DNA sample for DNA profiling ~~pursuant~~
14 ~~to section 81.4~~ if a DNA sample has not been previously
15 submitted pursuant to chapter 81.

16 Sec. 8. Section 331.653, Code 2011, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 72. Carry out duties relating to collecting
19 DNA samples pursuant to section 81.4.

20 Sec. 9. Section 901.5, subsection 8A, paragraph a, Code
21 2011, is amended to read as follows:

22 a. The court shall order ~~DNA profiling of~~ a defendant
23 convicted of an offense that requires DNA profiling under
24 section 81.2, to submit a DNA sample for DNA profiling if a DNA
25 sample has not been previously submitted pursuant to chapter
26 81.

27 Sec. 10. Section 906.4, subsection 3, paragraph a, Code
28 2011, is amended to read as follows:

29 a. The board may order the defendant to provide a ~~physical~~
30 ~~specimen to be~~ DNA sample for DNA profiling if a DNA sample
31 has not been submitted for DNA profiling pursuant to chapter
32 81 as a condition of parole or work release, if a DNA profile
33 ~~has not been previously conducted pursuant to chapter 81.~~ In
34 determining the appropriateness of ordering DNA profiling, the
35 board shall consider the deterrent effect of DNA profiling,

1 the likelihood of repeated offenses by the defendant, and the
2 seriousness of the offense.

3 Sec. 11. Section 910.1, subsection 4, Code 2011, is amended
4 to read as follows:

5 4. "*Restitution*" means payment of pecuniary damages to
6 a victim in an amount and in the manner provided by the
7 offender's plan of restitution. "*Restitution*" also includes
8 fines, penalties, and surcharges, the contribution of funds to
9 a local anticrime organization which provided assistance to law
10 enforcement in an offender's case, the payment of crime victim
11 compensation program reimbursements, payment of restitution
12 to public agencies pursuant to section 321J.2, subsection
13 13, paragraph "b", court costs including correctional fees
14 approved pursuant to section 356.7, reimbursement of costs to
15 an agency performing DNA profiling pursuant to chapter 81,
16 court-appointed attorney fees ordered pursuant to section
17 815.9, including the expense of a public defender, and the
18 performance of a public service by an offender in an amount set
19 by the court when the offender cannot reasonably pay all or
20 part of the court costs including correctional fees approved
21 pursuant to section 356.7, or court-appointed attorney fees
22 ordered pursuant to section 815.9, including the expense of a
23 public defender.

24 Sec. 12. Section 910.2, Code 2011, is amended to read as
25 follows:

26 **910.2 Restitution or community service to be ordered by**
27 **sentencing court.**

28 1. In all criminal cases in which there is a plea of guilty,
29 verdict of guilty, or special verdict upon which a judgment
30 of conviction is rendered, the sentencing court shall order
31 that restitution be made by each offender to the victims of
32 the offender's criminal activities, to the clerk of court for
33 fines, penalties, surcharges, and, to the extent that the
34 offender is reasonably able to pay, for crime victim assistance
35 reimbursement, restitution to public agencies pursuant to

1 section 321J.2, subsection 13, paragraph "b", court costs
2 including correctional fees approved pursuant to section 356.7,
3 reimbursement of costs to an agency performing DNA profiling
4 pursuant to chapter 81, court-appointed attorney fees ordered
5 pursuant to section 815.9, including the expense of a public
6 defender, when applicable, contribution to a local anticrime
7 organization, or restitution to the medical assistance
8 program pursuant to chapter 249A for expenditures paid on
9 behalf of the victim resulting from the offender's criminal
10 activities. However, victims shall be paid in full before
11 fines, penalties, and surcharges, crime victim compensation
12 program reimbursement, public agencies, court costs including
13 correctional fees approved pursuant to section 356.7,
14 reimbursement of costs to an agency performing DNA profiling
15 pursuant to chapter 81, court-appointed attorney fees ordered
16 pursuant to section 815.9, including the expenses of a public
17 defender, contributions to a local anticrime organization, or
18 the medical assistance program are paid. In structuring a plan
19 of restitution, the court shall provide for payments in the
20 following order of priority: victim, fines, penalties, and
21 surcharges, crime victim compensation program reimbursement,
22 public agencies, court costs including correctional fees
23 approved pursuant to section 356.7, reimbursement of costs to
24 an agency performing DNA profiling pursuant to chapter 81,
25 court-appointed attorney fees ordered pursuant to section
26 815.9, including the expense of a public defender, contribution
27 to a local anticrime organization, and the medical assistance
28 program.

29 2. When the offender is not reasonably able to pay all or a
30 part of the crime victim compensation program reimbursement,
31 public agency restitution, court costs including correctional
32 fees approved pursuant to section 356.7, reimbursement of costs
33 to an agency performing DNA profiling pursuant to chapter 81,
34 court-appointed attorney fees ordered pursuant to section
35 815.9, including the expense of a public defender, contribution

1 to a local anticrime organization, or medical assistance
2 program restitution, the court may require the offender
3 in lieu of that portion of the crime victim compensation
4 program reimbursement, public agency restitution, court costs
5 including correctional fees approved pursuant to section 356.7,
6 reimbursement of costs to an agency performing DNA profiling
7 pursuant to chapter 81, court-appointed attorney fees ordered
8 pursuant to section 815.9, including the expense of a public
9 defender, contribution to a local anticrime organization, or
10 medical assistance program restitution for which the offender
11 is not reasonably able to pay, to perform a needed public
12 service for a governmental agency or for a private nonprofit
13 agency which provides a service to the youth, elderly, or poor
14 of the community. When community service is ordered, the court
15 shall set a specific number of hours of service to be performed
16 by the offender which, for payment of court-appointed attorney
17 fees ordered pursuant to section 815.9, including the expenses
18 of a public defender, shall be approximately equivalent in
19 value to those costs. The judicial district department of
20 correctional services shall provide for the assignment of the
21 offender to a public agency or private nonprofit agency to
22 perform the required service.

23 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection
24 3, shall not apply to this Act.

25 EXPLANATION

26 This bill expands the number of persons required to submit a
27 DNA sample in a criminal proceeding.

28 The bill provides that a person arrested for an offense
29 classified as a felony shall submit a DNA sample for storage
30 in the DNA bank and DNA database maintained by the division
31 of criminal investigation of the department of public safety.
32 The bill also applies to juveniles taken into custody for an
33 offense classified as a felony if committed by an adult.

34 Current law requires a person to submit a DNA sample if
35 convicted, adjudicated delinquent, receiving a deferred

1 judgment, or found not guilty by reason of insanity of an
2 offense requiring DNA profiling pursuant to Code section 81.2.

3 The bill provides that upon admittance to a county jail,
4 the county sheriff shall collect a DNA sample from a person
5 arrested for a felony.

6 The bill also provides that if the offense which caused
7 the submission of a DNA sample is dismissed, the person who
8 submitted the DNA sample may file a written request along with
9 certified copies of relevant court records to expunge the DNA
10 record from the DNA bank and DNA database. Under the bill,
11 if the written request validates the dismissal of the charges
12 the division of criminal investigation shall expunge the DNA
13 record.

14 The bill requires any person required to submit a DNA sample
15 for DNA profiling under Code chapter 81 to reimburse the agency
16 performing the DNA profiling for performing such DNA profiling.

17 The bill may include a state mandate as defined in Code
18 section 25B.3. The bill makes inapplicable Code section 25B.2,
19 subsection 3, which would relieve a political subdivision from
20 complying with a state mandate if funding for the cost of
21 the state mandate is not provided or specified. Therefore,
22 political subdivisions are required to comply with any state
23 mandate included in the bill.